

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Miskovski	Team: Squad #3	CCRB Case #: 201910985	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 12/22/2019 11:30 AM, Monday, 12/23/2019 12:00 AM, Monday, 12/23/2019 12:30 AM	Location of Incident: Front of § 87(2)(b) Farmers Boulevard and Suffolk Drive; 113th Precinct stationhouse	Precinct: 113	18 Mo. SOL 6/22/2021	EO SOL 2/6/2022	
Date/Time CV Reported Fri, 12/27/2019 10:34 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 12/27/2019 10:34 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Leboff	1520	958803	GVSD Z1
2. DTS Joseph Cordova	04396	920154	ESS 09
3. POM Christopher Sanabria	13856	958048	GVSD Z1
4. PO Jhoan Lozano	04388	964624	GVSD Z1
5. POM Michael Boehm	01264	931551	ESS 09

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Bryan Cullen	02427	945363	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Leboff	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
B.POM Christopher Sanabria	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Christophe Sanabria stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
C.POM Daniel Leboff	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff questioned § 87(2)(b)	§ 87(2)(b)
D.POM Daniel Leboff	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff frisked § 87(2)(b)	§ 87(2)(b)
E.POM Daniel Leboff	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff searched § 87(2)(b)	§ 87(2)(b)
F.POM Daniel Leboff	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G.POM Christopher Sanabria	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Christophe Sanabria questioned § 87(2)(b)	
H.POM Daniel Leboff	Force: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff used physical force against § 87(2)(b)	
I.POM Daniel Leboff	Abuse: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff threatened § 87(2)(b) with the use of force.	
J.POM Christopher Sanabria	Discourtesy: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Christopher Sanabria spoke discourteously to § 87(2)(b)	
K.POM Daniel Leboff	Discourtesy: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff spoke discourteously to § 87(2)(b)	
L.PO Jhoan Lozano	Discourtesy: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)	
M.POM Christopher Sanabria	Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Christopher Sanabria spoke discourteously to § 87(2)(b)	
N.POM Christopher Sanabria	Off. Language: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Christophe Sanabria made offensive remarks to § 87(2)(b)	
O.POM Daniel Leboff	Abuse: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Daniel Leboff threatened § 87(2)(b) with the use of force.	
P.DTS Joseph Cordova	Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Detective Joseph Cordova spoke discourteously to § 87(2)(b)	
Q.DTS Joseph Cordova	Off. Language: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Detective Joseph Cordova made offensive remarks to § 87(2)(b)	
R.POM Michael Boehm	Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Michael Boehm spoke discourteously to § 87(2)(b)	
S.PO Jhoan Lozano	Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)	
T.PO Jhoan Lozano	Force: On December 23, 2019, at the 113th Precinct stationhouse, Police Officer Jhoan Lozano used physical force against § 87(2)(b)	
U.PO Jhoan Lozano	Discourtesy: On December 23, 2019, at the 113th Precinct stationhouse, Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On December 27, 2019, § 87(2)(b) a reporting non-witness, filed this complaint via the CCRB website on behalf of her son, § 87(2)(b) and § 87(2)(b) his girlfriend. § 87(2)(b) filed a duplicate complaint via the CCRB website on December 30, 2019, on behalf of herself and § 87(2)(b). The case was originally assigned to Investigator Zev Carter and was reassigned to Investigator Michael Miskovski on October 8, 2021.

On December 22, 2019, at approximately 11:30 p.m., Police Officer Christopher Sanabria and Police Officer Daniel Leboff of the 113th Precinct stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants at § 87(2)(b) in Queens (**Allegations A-B: Abuse of Authority, § 87(2)(g)**). PO Leboff approached the driver's side, while PO Sanabria approached the passenger side of the vehicle. PO Leboff began to speak with § 87(2)(b) and asked for his identification. Once § 87(2)(b) provided his identification, PO Leboff checked it in the NYPD system. After checking the identification, PO Leboff allegedly asked § 87(2)(b) about previous criminal charges that he might have faced in Virginia and § 87(2)(b)'s parole and instructed § 87(2)(b) to step out of the vehicle. PO Leboff patted § 87(2)(b) down, asking him questions about possible marijuana, and searched the insides of § 87(2)(b)'s jacket pockets (**Allegations C-E: Abuse of Authority, § 87(2)(g)**). The officers then ordered § 87(2)(b) out of the vehicle and instructed her and § 87(2)(b) to stand at the rear of the vehicle. PO Sanabria stood with § 87(2)(b) and § 87(2)(b) at the rear of the vehicle while PO Leboff searched the front and rear seats of the vehicle along with the trunk (**Allegation F: Abuse of Authority, § 87(2)(g)**). PO Leboff instructed § 87(2)(b) and § 87(2)(b) to get back into the vehicle and claimed that he had found marijuana during his search. He had also found a credit card skimmer and a fraudulent credit card during his search. While they waited for PO Leboff's search, PO Sanabria asked § 87(2)(b) about any possible marijuana (**Allegation G: Abuse of Authority, § 87(2)(g)**).

Once the search had concluded, the officers instructed § 87(2)(b) to step out of the vehicle again. Once he did so, PO Leboff placed § 87(2)(b) in handcuffs and told him that he was under arrest. The officers told § 87(2)(b) to get into the police vehicle but § 87(2)(b) refused. PO Sanabria and PO Leboff continued to argue with § 87(2)(b) until PO Leboff pushed § 87(2)(b) into the vehicle (**Allegation H: Force, § 87(2)(g)**). As PO Leboff pushed § 87(2)(b) § 87(2)(b) bit into the top of PO Leboff's head. Sergeant Bryan Cullen and Police Officer Jhoan Lozano, both of the 113th Precinct, arrived at the location. PO Leboff told § 87(2)(b) that he had just bitten him, and asked § 87(2)(b) "Do you want to get tased?" (**Allegation I: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) continued to kick his legs and twist and turn his body while shouting for help during the time the officers were trying to get him into the vehicle. PO Sanabria walked around to the other side of the vehicle to grab § 87(2)(b) from behind. PO Sanabria told § 87(2)(b) "Stop fucking kicking and get in the fucking car...get in the fucking car...put your head down and get in the fucking car." Continually throughout the struggle (**Allegation J: Discourtesy, § 87(2)(g)**). PO Sanabria also said to § 87(2)(b) "Don't give me that bullshit. Don't tell me that bullshit. You bring this on yourself, dude. Sit back. Sit the fuck back," (**Allegation J (continued): Discourtesy, § 87(2)(g)**). PO Leboff told Sgt. Cullen in front of § 87(2)(b) "He just fucking bit me," (**Allegation K: Discourtesy, § 87(2)(g)**). The officers continued to try to get § 87(2)(b) to sit in the vehicle while he screamed and twisted his body, refusing to put his legs into the car. PO Lozano told § 87(2)(b) "Sit down and stop acting like a fucking child, alright?" (**Allegation L: Discourtesy, § 87(2)(g)**). After several minutes, the officers managed to place all of § 87(2)(b)'s body into the vehicle and begin to transport him to the stationhouse.

En route, § 87(2)(b) started to slam his head against the window of the vehicle while PO Sanabria sat in the back seat and PO Lozano drove. PO Sanabria told § 87(2)(b) "Stop fucking

hitting the window...sit the fuck down in the fuckin seat, dude. What are you doing? You've got to sit the fuck down," meanwhile an officer asked PO Sanabria what the issue was, and PO Sanabria responded that § 87(2)(b) was "acting fucking crazy," (**Allegation M-N: Discourtesy and Offensive Language**, § 87(2)(g)). PO Lozano, PO Sanabria, Sgt. Cullen, and PO Leboff all stopped their vehicles at Farmers Boulevard and Suffolk Drive in Queens. § 87(2)(b) began to kick his legs again, causing Sgt. Cullen to call for ESU to help restrain him. § 87(2)(b) screamed at the officers. PO Leboff then removed his taser and aimed it at § 87(2)(b) but Sgt. Cullen told PO Leboff not to do so (**Allegation O: Abuse of Authority**, § 87(2)(g)). Police Officer Michael Boehm and Detective Joseph Cordova, both of Emergency Services Unit (ESU), arrived at the location and began to put § 87(2)(b) into leg restraints to prevent him from kicking. Det. Cordova told § 87(2)(b) to calm down because he was acting "a little crazy," (**Allegations P-Q: Discourtesy, Offensive Language**, § 87(2)(g)). While the ESU officers secured him, § 87(2)(b) continued to push against the officers and kick his legs. PO Boehm told § 87(2)(b) to not grab his "fucking hand," while he adjusted the seatbelt (**Allegation R: Discourtesy**, § 87(2)(g)). When the ESU officers finished, they placed § 87(2)(b) back into the vehicle with PO Sanabria in the rear and PO Lozano in the driver's side. PO Lozano told § 87(2)(b) "Enough of this shit, alright?...Enough of this shit, dude," (**Allegation S: Discourtesy**, § 87(2)(g)).

Once they reached the 113th Precinct stationhouse, PO Sanabria and PO Lozano carried § 87(2)(b) from the vehicle into the stationhouse and processed his arrest. Once they took him back to the cells, PO Leboff joined them and removed the handcuffs off § 87(2)(b). PO Lozano attempted to lodge § 87(2)(b) into the cells, but § 87(2)(b) tried to walk out of the cells. PO Lozano repeated the instructions to stay inside the cell, but § 87(2)(b) ignored him. PO Lozano first grabbed § 87(2)(b)'s arms and redirected him into the cells, but § 87(2)(b) tried again to walk out of them. PO Lozano then pushed § 87(2)(b) further back into the cell, using two hands while saying, "Get the fuck inside," (**Allegations T-U: Force, Discourtesy**, § 87(2)(g)). PO Leboff and PO Lozano quickly shut the door and locked it as § 87(2)(b) tried once more to exit and entered a fighting stance to confront the officers. § 87(2)(b) was arrested for possession of a forgery device, possession of a forged instrument, resisting arrest, obstruction of governmental administration, and unlawful possession of marijuana § 87(2)(b) (**BR 01**).

The investigation received body-worn camera (BWC) footage from PO Leboff (**BR 02-03**), Sgt. Cullen (**BR 06-08**), PO Lozano (**BR 05**), § 87(2)(g), § 87(4-b)

Findings and Recommendations

Allegation (A) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Christopher Sanabria stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

In her statement to the CCRB, § 87(2)(b) stated that on December 22, 2019, at approximately 10:00 p.m., § 87(2)(b) drove east on 114th Drive, crossed Farmer's Boulevard, and then stopped at a nearby corner store (**BR 09**). After buying a drink at the store, they continued to drive east on 114th Road, turned right on 194th Street, and eventually parked near § 87(2)(b). § 87(2)(b) had rented a dark blue 2015 BMW 5-series sedan with New Jersey license plate § 87(2)(b) via mobile phone application Turo, which allows private vehicle owners to rent their cars. § 87(2)(b) and § 87(2)(b) had picked the vehicle up from Newark, New Jersey a

few days before the incident. As § 87(2)(b) parked, an unmarked burgundy Chevrolet Impala stopped diagonally in front of their car. § 87(2)(b) and § 87(2)(b) lowered their car windows. PO Leboff approached § 87(2)(b) on the driver's side of the vehicle while PO Sanabria stood on the passenger's side of the vehicle. PO Leboff told § 87(2)(b) that he had not used his directional signal while driving and asked for his and § 87(2)(b)'s identification. § 87(2)(b) stated that § 87(2)(b) did use the vehicle's signals.

§ 87(2)(b) refused to provide a statement for the investigation due to the possibility of it being used in court (**BR 10**).

In his interview with the CCRB, PO Leboff testified that while he was driving his police vehicle, he observed the vehicle described as a blue BMW fail to signal while making a right turn though he did not specify where in his CCRB interview (**BR 11**). There were no cars between PO Leboff and the vehicle, which was several car lengths' distance away. The vehicle immediately pulled over to the curb on its own, parking in front of a fire hydrant. At this point, PO Leboff pulled in front of the vehicle.

In his CCRB interview, PO Sanabria stated that he observed § 87(2)(b)'s vehicle fail to use its turn signal though he did not specify where in his CCRB interview (**BR 12**). PO Sanabria sat in the passenger seat while PO Leboff was driving. There were no vehicles between the officers and the vehicle that committed this infraction, which was approximately a car length's distance away. PO Leboff turned the vehicle's lights on to conduct the stop. The vehicle pulled over at the end of the block, along the right side. The police vehicle was stopped in front of the other vehicle.

In the narrative of arrest report § 87(2)(b) for § 87(2)(b) PO Leboff noted that § 87(2)(b) failed to signal (**BR 01**).

In PO Leboff's BWC footage, contained in IA#71, does not capture the initial audio of the stop (**BR 02**). However, at 01:40, while PO Leboff checks § 87(2)(b)'s license with the NYPD system on the department phone, § 87(2)(b) says, "...you deadass, just for a fucking turn signal dude?" PO Sanabria's BWC does not capture this conversation since he is standing on the other side of the car (**BR 04**).

From the contemporaneous BWC footage and from both officers' and § 87(2)(b)'s statements, there is no doubt that the officers told § 87(2)(b) that he had failed to use his signal. However, since there is no footage of the alleged turn without the signal and since § 87(2)(b) denied that § 87(2)(b) ever failed to use his signal, the investigation is unable to determine whether § 87(2)(b) turned without signaling. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff questioned § 87(2)(b)

Allegation (D) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff frisked § 87(2)(b)

Allegation (E) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff searched § 87(2)(b)

Allegation (F) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (G) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Christopher Sanabria questioned § 87(2)(b).

In her interview, § 87(2)(b) stated that once the officers stopped the vehicle, PO Leboff requested and received § 87(2)(b)'s ID (**BR 09**). PO Leboff appeared to check the identification and then asked § 87(2)(b) if he was on parole. § 87(2)(b) responded that he was on parole in

§ 87(2)(b) PO Leboff then instructed § 87(2)(b) and § 87(2)(b) to step out of the vehicle, and they complied. PO Leboff patted down § 87(2)(b) on his chest and front pockets of his jacket. PO Leboff reached into the pocket of § 87(2)(b)'s sweatshirt and also patted down § 87(2)(b)'s jeans pockets. He told § 87(2)(b) to turn around and patted down the back of § 87(2)(b)'s legs. Once he had finished, PO Leboff instructed the two to return to their seats and went back to the police vehicle. When PO Leboff returned again from the police vehicle, he instructed the two to step out of the vehicle again and wait at the rear with PO Sanabria. PO Leboff proceeded to search the passenger side of the vehicle. He announced to the group that he had found marijuana within the passenger area. § 87(2)(b) denied that there could have been marijuana because neither she nor § 87(2)(b) smoke marijuana and they recently had the car washed a few hours before the incident. § 87(2)(b) and § 87(2)(b) returned to their seats when PO Leboff instructed them, and the latter searched the trunk while they were seated.

In his CCRB interview, PO Leboff stated that as soon as he approached the vehicle and § 87(2)(b) lowered the windows, he could smell both burned and vegetative marijuana (**BR 11**). He could see § 87(2)(b)'s torso when speaking with him and did not believe that § 87(2)(b) had any weapons or see any bulges on § 87(2)(b)'s clothing. Due to the odor of marijuana, PO Leboff instructed § 87(2)(b) to step out of the vehicle. PO Leboff then patted down and searched § 87(2)(b) by reaching into all of his pockets, his waistband, and all the areas along § 87(2)(b)'s body. He did not recall if he removed anything from § 87(2)(b)'s pockets. He did not remember if he found anything on § 87(2)(b)'s person. PO Leboff stated that he did not consider the pat-down of § 87(2)(b) as a frisk or pat down § 87(2)(b) but searched him rather it was all part of a search for marijuana because of the odor. Once he finished searching § 87(2)(b), PO Leboff instructed § 87(2)(b) and § 87(2)(b) to go to the rear of the vehicle, and they complied. PO Sanabria stood with § 87(2)(b) and § 87(2)(b) while PO Leboff searched the interior of the vehicle due to the odor of marijuana. He recovered a small amount of marijuana and a burnt marijuana cigarette. He did not recall the exact location of the marijuana within the vehicle. He also found a credit card skimmer within a false pocket of a jacket in the vehicle along with a fraudulent credit card. He noted that he believed the card was fraudulent due to his training: the card lacked raised numbers, was not professionally embossed, and the picture on the card was blurry. When he finished, he directed the occupants to return to their seats and searched the trunk of the vehicle. He did not recover anything from the trunk.

PO Sanabria provided a consistent statement with PO Leboff's in his CCRB interview (**BR 12**). PO Sanabria smelled the odor of marijuana while he stood on the passenger side of the vehicle, where § 87(2)(b) sat. He could not remember if the odor smelled like burnt or unburnt marijuana. He did not witness PO Leboff search § 87(2)(b) because he stood on the other side of the vehicle. PO Sanabria stood at the rear of the vehicle with § 87(2)(b) and § 87(2)(b) while PO Leboff searched it. He did not recall anything about conversing with § 87(2)(b) and § 87(2)(b) while standing at the trunk.

PO Leboff's BWC footage contained in IA #71, shows his search of § 87(2)(b) and the vehicle (**BR 02**). At 05:35, PO Leboff instructs § 87(2)(b) to exit the vehicle and asks him, "Nothing on you? Little bit of weed, nothing like that?" During the course of this exchange, PO Leboff pats § 87(2)(b)'s legs, goes into his pants pockets and sweatshirt pocket. Once he finishes, PO Leboff instructs § 87(2)(b) to go to the rear of the vehicle. At 06:50, PO Leboff opens the driver's side door and searches the door compartment. He leans into the driver's and passenger's seats and searches. He appears to look inside the center console at 07:45 and removes something, examining it until 08:15; the object is not visible due to the center console obstructing the view. He then leans toward the passenger seat, but the camera does not capture what he searches. He then leans into the back seats and reaches into a black puffy jacket in the rear seats, removing a black case from inside of it. He returns to the front of the vehicle and opens the trunk. He continues to search the front of the vehicle until 11:32. As he returns to the group at the rear, he says, "For someone who doesn't smoke weed, you've got weed crumbs all over the car man." § 87(2)(b)

§ 87(2)(b) says that they rented the car and were not responsible for it. They return to their seats. At 12:00, PO Leboff opens the trunk and searches it while saying to PO Sanabria, “It’s going to be Charlie [an arrest].” PO Leboff searches the trunk until 14:30. At that point, PO Leboff reports over the radio that he will be making an arrest and requests assistance.

PO Sanabria’s BWC footage in IA #72 does not capture as much as PO Leboff’s but does capture the exchange at the rear of the vehicle while PO Leboff searches it (**BR 04**). At 11:20, § 87(2)(b) asks, “What is this all about?” PO Sanabria replies, “What did my partner ask you when you got out of the car? You got any marijuana on you?” § 87(2)(b) says, “I don’t smoke marijuana.” At this point, PO Leboff returns to the group and makes the previously mentioned comments about “weed crumbs.”

NYPD Property Voucher § 87(2)(b) completed by PO Leboff notes vegetative marijuana and the remains of a marijuana cigarette (**BR 13**). In the narrative of arrest report § 87(2)(b) for § 87(2)(b) PO Leboff noted that there was the odor of marijuana in the car and that a small amount of marijuana was recovered (**BR 01**).

In *People v. Chestnut*, 36 N.Y.2d 917, the court determined that the odor of marijuana smoke during a vehicle stop was sufficient for officers of sufficient training and experience to search the vehicle and its occupants (**BR 14-15**).

NYPD Patrol Guide Procedure instructs officers as to the levels of interactions with civilians and their authority to initiate each level at a certain threshold (**BR 33**). The Common Law Right of Inquiry is a level two encounter, commonly known as a question, and requires founded suspicion that criminal activity is afoot. A Terry Stop is a level three encounter and requires reasonable suspicion that a person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Under the level three stop, officers may frisk the person if the officer has reasonable suspicion that the person is armed and dangerous.

§ 87(2)(g)

§ 87(2)(g) Since the marijuana was vouchered and its presence was attested to in the contemporaneous BWC recording, the investigation has determined that this marijuana could have created the odor that both PO Sanabria and PO Leboff testified to. § 87(2)(g)

§ 87(2)(g)

Allegation (H) Force: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff used physical force against § 87(2)(b)

Allegation (I) Abuse of Authority: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff threatened § 87(2)(b) with the use of force.

In her CCRB interview, § 87(2)(b) stated that once the officers finished searching the vehicle, they instructed § 87(2)(b) to step out, handcuffed him and told him that he was under arrest (**BR 09**). When they tried to place § 87(2)(b) into the vehicle, he was not resisting in any way, but PO Leboff forcefully pushed § 87(2)(b) in the chest to put him into the back seat of the vehicle. The entire time, § 87(2)(b) was screaming the word “help.” Other officers arrived at the location and told § 87(2)(b) that she was free to go home, but they would be taking the vehicle as a part of the arrest. She did not see or hear any further interaction between § 87(2)(b) and the officers.

The investigation is pleading Allegation I based off the actions shown in the BWC footage since § 87(2)(b) did not allege it in her interview.

PO Leboff testified in his interview that once he had finished searching the vehicle, he communicated to PO Sanabria that they would be arresting § 87(2)(b) (**BR 11**). PO Leboff instructed § 87(2)(b) to step out and handcuffed him. § 87(2)(b) shifted his arms slightly while PO Leboff handcuffed him but did not cause any other problems. PO Leboff walked to the police car and opened the rear passenger door, but § 87(2)(b) refused to enter it. At that point, § 87(2)(b) was standing with his back to the open door. PO Leboff told § 87(2)(b) that he was under arrest numerous times and told him that he needed to get inside the police car. After several minutes, PO Leboff told § 87(2)(b) that he would be forced to put him inside the vehicle if he did not get inside. PO Leboff tried to lift up § 87(2)(b)'s legs to put him in the rear of the vehicle. PO Sanabria and PO Leboff spent a "decent amount of time" instructing § 87(2)(b) to get in the car. When PO Leboff attempted to lift § 87(2)(b)'s legs, PO Sanabria went to the driver side of the police car and opened a door to assist PO Leboff in getting § 87(2)(b) into the vehicle. PO Sanabria reached to pull § 87(2)(b) inside of the vehicle but PO Leboff could not remember how he did so. He could not recall exactly when PO Sanabria made contact with § 87(2)(b) including if it was while PO Leboff was lifting § 87(2)(b)'s legs. PO Leboff believed that at that point, § 87(2)(b) was actively resisting the officers.

As they were trying to place § 87(2)(b) into the car, § 87(2)(b) bit PO Leboff on the top of his head (**BR 11**). PO Leboff yelled to PO Sanabria that § 87(2)(b) had bitten him. PO Sanabria came back to PO Leboff's side and assisted him in trying to get § 87(2)(b) into the car. PO Leboff did not recall whether he told § 87(2)(b) that he would use a taser against him while telling him to get into the car. He denied punching § 87(2)(b) when telling him to get in the car. PO Leboff denied kicking § 87(2)(b) and denied headbutting him. He did not recall using any additional force besides picking up § 87(2)(b)'s legs while trying to get him into the police vehicle at the scene of the car stop. At some point during the struggle, PO Lozano and Sgt. Cullen arrived at the location.

PO Leboff was eventually able to get § 87(2)(b) into the car by lifting him up and using force to push him inside of the vehicle (**BR 11**). PO Leboff also had to lift § 87(2)(b)'s leg, which he was using to hook under the vehicle. § 87(2)(b) was screaming the entire time. PO Leboff pushed § 87(2)(b) from his body but could not say exactly from where he made contact on § 87(2)(b)'s body. He used his hands to push § 87(2)(b). PO Leboff could not remember if PO Lozano or Sgt. Cullen made physical contact with § 87(2)(b) to get him into the vehicle.

PO Leboff explained that officers are allowed to use Taser when people are actively resisting, which he defined as any sort of combative behavior towards a perpetrator's self, officers, or members of the public (**BR 11**). § 87(2)(b) actively resisted from the point of refusing to get into the police car all the way until being placed in the holding cell. PO Leboff noted that § 87(2)(b)'s actions at the scene that constituted active resistance were his biting PO Leboff on his head, kicking his legs, flailing his legs, hooking a leg under the vehicle to prevent himself being placed inside, and screaming. PO Leboff testified that officers were not allowed to use Tasers on rear-cuffed individuals, with the exception of "certain circumstances." When asked to note what circumstances these would be, PO Leboff replied, "It's a case-by-case basis."

PO Leboff did not recall whether he prepared an exposure report or anything similar to document the bite (**BR 11**). He did not receive any medical treatment for the bite aside from self-treatment, which consisted of cleaning out the wound and applying Bacitracin nightly for about a week. PO Leboff described the wound as a crescent-shaped bite mark on the top of his head. The wound did not break the skin but left a red mark that lasted approximately one week.

In his CCRB interview, PO Sanabria stated that § 87(2)(b) did not want to get into the police vehicle upon being told that he was under arrest (**BR 12**). Upon being walked to the vehicle, § 87(2)(b) wanted to stay with his own car and screamed, asking why he was being arrested. § 87(2)(b) stated that he would not get into the vehicle. PO Sanabria went to the opposite side of the

car to try to help PO Leboff in pulling § 87(2)(b) inside. PO Leboff bent down to push § 87(2)(b) into the car and § 87(2)(b) bit the top of PO Leboff's head. From his vantage point, PO Sanabria was unable to see where PO Leboff had been pushing § 87(2)(b) because PO Sanabria was inside of the vehicle with § 87(2)(b). § 87(2)(b)'s back was to the car and the door was open. From inside of the car, PO Sanabria grabbed one of § 87(2)(b)'s arms and pulled him inside. He did not do anything else when grabbing § 87(2)(b)'s arm. PO Sanabria did not use any additional force at the scene of the car stop. He did not see PO Leboff use any additional force besides pushing § 87(2)(b) into the car. PO Sanabria did not witness PO Leboff threaten to use a taser against § 87(2)(b) (**BR 12**). He noted that when he reviewed his BWC footage, he heard PO Leboff yell "Taser" but denied that a Taser was ever drawn. PO Sanabria believed that this statement was made after PO Leboff was bitten on the head. During the entire interaction, the officers repeatedly asked § 87(2)(b) to get in the car, but § 87(2)(b) refused and continued to scream.

PO Leboff's BWC footage contained in IA #71 shows PO Leboff and PO Sanabria handcuffing § 87(2)(b) at 15:29 (**BR 02**). § 87(2)(b) continually asks PO Leboff why he is being arrested and continually cries out the word "please." At 16:31, PO Leboff opens the rear door of the police vehicle and tells § 87(2)(b) to sit down. § 87(2)(b) stands with his back to the car and continues to say the word "please" in an excited tone. PO Leboff repeatedly instructs § 87(2)(b) to sit in the vehicle, explaining that he is trying to keep the charges to a minimum. § 87(2)(b) refuses and denies having anything in the car. PO Sanabria tells § 87(2)(b) that PO Leboff is asking nicely. § 87(2)(b) continues to ask and cry that he has nothing. PO Leboff tells him four more times that he is under arrest and needs to sit in the car. § 87(2)(b) tells the officers that he will not get in the car. He tells the officers to explain why he is under arrest, saying to the officers that "it is fucked up." PO Sanabria and PO Leboff tell § 87(2)(b) again to get into the vehicle. § 87(2)(b) tells the officers that they are "fucking him over" and begins to raise his voice. After two minutes of speaking with § 87(2)(b) at 18:30, PO Leboff grabs § 87(2)(b)'s shoulders and tells him to get in the car. PO Leboff tells him that he does not want to do this and tells him to get in the car. § 87(2)(b) continues to stand against PO Leboff and says that PO Leboff is forcing him in the car. § 87(2)(b) tells § 87(2)(b) to stop arguing. At 18:47, the view gets too dark to see anything and a small physical scuffle is heard. § 87(2)(b) shouts, "Stop please!" PO Leboff shouts, "Don't bite me!" § 87(2)(b) then begins to scream "Stop! Help! Stop hitting me!" He begins to scream constantly and cry. § 87(2)(b) can be heard crying in the background. PO Leboff states, "You bit me!" By 19:11, § 87(2)(b) sits in the car and screams for help, while his legs are outside of the vehicle. At 19:17, PO Leboff asks, "You want to get tased? I'll tase you." § 87(2)(b) screams "Help!" Stop! Please sir!" PO Leboff tries to grab § 87(2)(b)'s legs and tells him, "Get in the car!" § 87(2)(b) cries and shouts in the background for officers to stop. § 87(2)(b) kicks his legs against PO Leboff trying to grab them. At 19:43, Sgt. Cullen and PO Lozano arrive while PO Leboff is struggling in the backseat.

PO Sanabria's BWC footage in IA #72 shows the officers escorting § 87(2)(b) to the police vehicle at 16:30 (**BR 04**). From PO Sanabria's vantage point, § 87(2)(b) can be seen standing by the car and refusing to enter as seen in PO Leboff's BWC footage. At 17:58, PO Sanabria tells § 87(2)(b) that his resistance is "getting ridiculous". The officers continually tell § 87(2)(b) that he has to enter the car. At 18:53, PO Leboff bends down and grabs § 87(2)(b) at the waist area and then pushes him into the car with PO Leboff's own body. § 87(2)(b) screams, and PO Leboff shouts, "Don't bite me." The footage is blurry and blacked out from 18:56 to 19:07 because PO Sanabria leans into the car while § 87(2)(b) screams and twists his body and kicks his legs, obscuring the camera. § 87(2)(b) can be seen standing back up by 19:07, while PO Leboff continues to try to grapple with him. § 87(2)(b) shouts for the officers to stop hitting him and leans back into the car. At 19:22, PO Leboff asks, "You want to get tased? I will tase you." At 19:24, PO Sanabria walks to the other side of the vehicle and someone shouts, "I'm going to tase you, get in the car!" § 87(2)(b) screams multiple times. PO Sanabria enters the rear

of the vehicle from the other side and tries to grab § 87(2)(b)

In his interview, PO Leboff stated that he prepared a Threat, Resistance, and Injury (TRI) report (BR 11), however, when the investigation requested it, IAB returned negative results (BR 13). A request for a Line of Duty Report for PO Leboff's injury from the bite returned negative results (BR 19).

NYPD Patrol Guide Procedure 208-06 instructs officers to rear-cuff the prisoner and place them in the rear seat of the police vehicle (BR 16). NYPD Patrol Guide Procedure 221-01 instructs officers to use a reasonable amount of force to gain compliance from a subject, and they are to consider the following: "nature and severity of the crime; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number and size of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject's violent history if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence," (BR 17). Also in this section, officers are instructed that "a Conducted Electrical Weapon (CEW) [taser] should never be used in CARTRIDGE or DRIVE STUN mode on a rear-cuffed prisoner as per P.G. 221-08."

NYPD Patrol Guide Procedure 221-08 states that a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present (BR 18). The CEW has two modes: Cartridge mode uses the darts attached to the CEW by wires, and Drive Stun mode is the manual usage of the CEW for direct contact. It clarifies that "a CEW should never be used in CARTRIDGE or DRIVE STUN mode on a rear-cuffed prisoner." It also defines active resisting as "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbal signaling an intention to avoid or prevent being taken into or trained in custody." Active Aggression is defined as, "threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent." Finally, it defines passive resistance as, "minimal physical action to prevent a member from performing their lawful duty."

It is undisputed that PO Leboff grappled and pushed § 87(2)(b) into the vehicle. By the definitions of the Patrol Guide, § 87(2)(b) was engaging in active resistance to the officers by verbally and physically refusing to enter into the vehicle. The officers were required to place § 87(2)(b) into the rear of the vehicle as stated in the Patrol Guide. § 87(2)(g)

§ 87(2)(b) was actively resisting PO Leboff and PO Sanabria, the officers had tried to reason with § 87(2)(b) for over two minutes, the officers and § 87(2)(b) were in the middle of the road at night in a residential area, and there were two officers present with § 87(2)(b) § 87(2)(g)

Once § 87(2)(b) had been pushed, he escalated his behavior and began to kick the officers and bit PO Leboff on the head, which met the Patrol Guide standard of "active aggression." While this would have allowed for a greater level of force in response, the Patrol Guide specifically forbids the use of the Taser on rear-cuffed individuals. Since § 87(2)(b) was a rear-cuffed prisoner, PO Leboff's threat to taser § 87(2)(b) as captured on the BWC, § 87(2)(g)

Allegation (J) Discourtesy: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Christopher Sanabria spoke discourteously to § 87(2)(b)

Allegation (K) Discourtesy: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Daniel Leboff spoke discourteously to § 87(2)(b)
Allegation (L) Discourtesy: On December 22, 2019, in front of § 87(2)(b) in Queens, Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)

Allegations J-L are being pled due to being captured on the BWC footage and were not alleged by § 87(2)(b) (BR 10).

PO Sanabria's BWC footage in IA #72 captures that while PO Sanabria and PO Leboff struggled with § 87(2)(b) in the back the vehicle after § 87(2)(b) bit PO Leboff, officers made several statements to § 87(2)(b) as the latter screamed and kicked (BR 04). At 19:40, PO Sanabria leans in the car and while trying to grab § 87(2)(b) tells him, "Stop fucking kicking and get in the fucking car... Get in the car... Get in the fucking car... Put your head down and get in the car... Get in the fucking car." Sgt. Cullen is heard telling § 87(2)(b) that he is the supervisor and tells him to get into the car. At 20:00, PO Sanabria tells § 87(2)(b) "Get in the car, you play this bullshit, dude. You just fucking bit him... Get your fucking foot in the car... Get in the fucking car, dude... This is why... This is why the nonsense you fucking play." At 20:35, PO Lozano tells § 87(2)(b) "Sit down. Sit down and stop acting like a fucking child, alright?" At that point, § 87(2)(b) can be seen sitting upright in the back seat of the car. At 20:45, PO Sanabria gets into the car and tells § 87(2)(b) "Don't give me that bullshit. Don't tell me that bullshit, oh, they treat you this way, that way. You bring this on yourself, dude. Sit back. Sit the fuck back." At 22:10, PO Sanabria tells § 87(2)(b) not to break the window of the car as § 87(2)(b) kicks around the back seat and swings his body into the windows.

In PO Leboff's BWC footage in IA #71, at 19:40, PO Leboff is heard telling Sgt. Cullen, "He just fucking bit me," as they struggle with § 87(2)(b) in the back seat (BR 02).

In PO Lozano's BWC footage in IA #75 shows that as PO Lozano and Sgt. Cullen arrived, § 87(2)(b) was screaming in the back seat of the vehicle and struggling with PO Leboff and PO Sanabria (BR 05). PO Lozano walks up to PO Leboff who is struggling to push § 87(2)(b) into the rear seat of the vehicle. § 87(2)(b) shouts "Stop!" and asks, "What did I do?" several times. At 1:45, PO Lozano leans into the rear seat and tells § 87(2)(b) "Sit down and stop acting like a fucking child." PO Leboff and PO Lozano manage to get the rest of § 87(2)(b)'s body into the vehicle and shut the door. PO Lozano walks to the driver's side and begins to drive the car with PO Sanabria and § 87(2)(b) in the rear seat.

In his interview, PO Sanabria acknowledged making all the statements containing profanity captured in the BWC footage (BR 12). He explained that he made them because he was fighting a handcuffed man and was trying to get him to the precinct without him hurting PO Sanabria, his partners or himself.

In his interview, PO Leboff acknowledged telling Sgt. Cullen, "He just fucking bit me." He explained that he used the word "fucking" when speaking with Sgt. Cullen because of the shock of having been bit (BR 11).

In his interview, PO Lozano did not recall using any discourteous language during the initial part of the incident and believed that he had instructed § 87(2)(b) to get into the car (BR 20). After viewing his BWC footage in the interview, he acknowledged making the discourteous statement. PO Lozano explained he made the statement because he believed that § 87(2)(b) was acting extremely belligerent, was not listening to any commands, was kicking around, and could have injured other officers or himself.

NYPD Patrol Guide Section 203-10 (from the Patrol Guide in effect in 2019) states that officers are prohibited from making discourteous remarks and discourteous behavior towards civilians, especially "discourteous remarks regarding another person's age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (BR 34). DAO-DCT Case 2017-17276 states that discourtesies used by officers may be excused in the course of a violent confrontation and high-stress situations (BR 22).

Since it has been established that § 87(2)(b) was, at that point in the incident, participating in active aggression by kicking, screaming, and biting PO Leboff, the investigation finds that the situation had reached a confrontational level. § 87(2)(g)

None of the discourtesies were used specifically to ridicule § 87(2)(b) but instead expressed the high level of stress at his behavior and active aggression against the officers and after previously trying to speak with him calmly as shown in the previous allegations. § 87(2)(g)

Allegation (M) Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Christopher Sanabria spoke discourteously to § 87(2)(b)

Allegation (N) Offensive Language: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Christopher Sanabria made offensive remarks to § 87(2)(b)

Allegation (O) Abuse of Authority: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Daniel Leboff threatened § 87(2)(b) with the use of force.

Allegation (P) Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Detective Joseph Cordova spoke discourteously to § 87(2)(b)

Allegation (Q) Offensive Language: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Detective Joseph Cordova made offensive remarks to § 87(2)(b)

Allegation (RQ) Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Michael Boehm spoke discourteously to § 87(2)(b)

Allegation (S) Discourtesy: On December 23, 2019, at Farmers Boulevard and Suffolk Drive in Queens, Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)

Allegations M-S are being pled based on the BWC footage and were not alleged by § 87(2)(b)

As shown in PO Sanabria's BWC footage in IA #72, PO Lozano drove PO Sanabria and § 87(2)(b) to the stationhouse (BR 04). However, en route, as they reached a location near the intersection of Farmers Boulevard and Suffolk Drive, § 87(2)(b) continued to scream and shake his body. At 23:45, PO Sanabria tells § 87(2)(b) to sit back. A banging noise is then heard on the camera. PO Lozano stops the car. PO Sanabria says, "Stop fucking hitting the window." At 25:00, PO Sanabria says, "Sit the fuck down in the fucking seat, dude. What are you doing? You've got to sit the fuck down, dude." At 25:15, the back door opens and Sgt. Cullen can be heard asking, "What's wrong?" An officer opens the passenger's side door. PO Sanabria says that § 87(2)(b) is "acting fucking crazy." Sgt. Cullen tells § 87(2)(b) to stop "fighting" and to calm down because he is only making things worse, and adds at the end, "Do not kick me." At 25:45, the camera shows that § 87(2)(b) is sitting upright with his right leg pointed outside of the rear passenger's side door. Sgt. Cullen tries to lift § 87(2)(b)'s right leg into the car. § 87(2)(b) yells that he "need[s] air" and yells for help. At 26:05, Sgt. Cullen requests ESU over the radio. § 87(2)(b) says that he cannot breathe while breathing heavily and swinging his legs. The officers tell him to put his foot in the car multiple times. He does not. PO Sanabria tells § 87(2)(b) "You're not going to sit forwards." § 87(2)(b) says, "I can't. You've got your fucking forearm on my chest." At 26:55, PO Sanabria tells § 87(2)(b) that he is "acting crazy." The officers continue to tell § 87(2)(b) to put his feet in the car and § 87(2)(b) resumes screaming and complaining of pain.

As PO Sanabria's BWC footage continues at 37:10, Sgt. Cullen closes the door and shines his flashlight on § 87(2)(b) (BR 04). Both of § 87(2)(b)'s legs are inside of the car and he is sitting upright. At 37:50, PO Sanabria adjusts his BWC so that it points across the car directly at § 87(2)(b). At 40:45, ESU officer, PO Boehm opens the rear passenger's side door and tells § 87(2)(b)

§ 87(2)(b) to put his legs outside of the car multiple times. § 87(2)(b) does not do so and insists that he is “alright.” At 42:20, PO Sanabria gets out of the police vehicle. ESU Det. Cordova leans into the open rear passenger door. PO Sanabria goes to the rear of the vehicle while § 87(2)(b) screams for help. At 46:40, PO Leboff comes to the rear of the vehicle. PO Sanabria tells him that § 87(2)(b) was trying to lift his feet in the back of the vehicle. The ESU officers finish restraining § 87(2)(b)’s legs at 48:45 but their actions are not clearly visible to the camera. PO Sanabria walks to the open the rear door on the driver’s side. § 87(2)(b) leans out and screams for help. PO Lozano re-enters the driver’s seat and tells § 87(2)(b) “Enough of this shit dude,” (48:58) and begins to drive them back to the stationhouse.

PO Leboff’s BWC footage in IA#71 captures the same portion of the incident as PO Sanabria’s BWC footage (**BR 02**). PO Leboff stops driving his vehicle and approaches the police vehicle where Sgt. Cullen stands at the rear with § 87(2)(b). At 25:50, Sgt. Cullen requests that ESU come to the location to “bag a prisoner.” At 28:00, PO Lozano says, “Do not spit on me.” PO Leboff remains at the rear passenger door of the unmarked vehicle. At 28:35, § 87(2)(b) screams, “Help!” multiple times and says that the officers are hurting him. At 28:41, PO Leboff appears to point a Taser into the vehicle without saying anything. At 29:20, § 87(2)(b) says something about an officer shooting him. PO Leboff says, “That’s a Taser.” At 37:00, § 87(2)(b) sits upright in the rear of the car and an officer closes the door. At 37:35, PO Leboff walks to an ESU truck that has arrived. Sgt. Cullen requests that the ESU officers put leg straps on § 87(2)(b) because he is kicking in the back seat. PO Leboff and Sgt. Cullen return to the police vehicle with § 87(2)(b). At 40:00, Det. Cordova and PO Boehm approach the vehicle. At 40:29, Det. Cordova speaks to § 87(2)(b) and says, “What’s going on? You have to calm down a little. You’re acting a little crazy.” Det. Cordova tells § 87(2)(b) to move his legs out of the car and toward him. § 87(2)(b) breathes heavily and refuses to allow Det. Cordova to put leg straps on him. PO Boehm walks to the driver’s side of the vehicle and enters the rear seats. At 42:50, Det. Cordova begins to put the straps on § 87(2)(b). § 87(2)(b) yells, “Help!” and asks, “Why you taking my shoes, dude?” Det. Cordova responds, “Because I don’t want you to kick anyone.”

As the video continues, at 43:30, PO Leboff moves to a position that provides a better view of § 87(2)(b)’s lower legs as the officers restrain them using Velcro straps (**BR 02**). At 44:00, § 87(2)(b) begins to move, though it is unclear exactly how. At 44:25, § 87(2)(b) continues to yell. At 46:20, Det. Cordova finishes tying § 87(2)(b)’s lower legs together. PO Leboff moves to the trunk of the police car as the officers reposition § 87(2)(b) in the back seat. § 87(2)(b) continues screaming. At 47:35, PO Boehm is heard telling § 87(2)(b) not to touch his “fucking hand.” By 48:40, the ESU officers finish restraining § 87(2)(b) and leave the rear of the car. PO Leboff returns to his own vehicle.

Sgt. Cullen’s BWC footage in IA #76 depicts the same as the other videos (**BR 08**). His contains a clear vantage point of PO Leboff aiming his Taser at § 87(2)(b). At 04:20, as Sgt. Cullen tries to grab § 87(2)(b)’s legs to place them in the car, § 87(2)(b) begins to shout for help. Sgt. Cullen tells § 87(2)(b) “Do not kick me!” At 04:30, Sgt. Cullen says, “No, do not tase him,” while a red laser dot, an aiming reticule, is visible on § 87(2)(b)’s chest. Later in the BWC footage, after PO Boehm and Det. Cordova place the leg straps on § 87(2)(b). Sgt. Cullen’s BWC captures PO Boehm instructing a screaming and twisting § 87(2)(b) “Dude, stop grabbing my fucking hand.” § 87(2)(b) shouts back, “I’m not grabbing your fucking hand, stop trying to murder me.” PO Boehm replies, “I’m trying to put a seatbelt on.” The ESU officers finish and shut the door while Sgt. Cullen ends the recording.

PO Lozano’s BWC footage in IA #75 depicts the same as the other videos (**BR 05**). However, at 30:00, after the ESU officers finish and everyone returns to their vehicles, § 87(2)(b) leans out of the vehicle and shouts for help, PO Lozano gets into the police vehicle’s driver’s seat, leans back toward § 87(2)(b) and says, “Enough of this shit, alright? . . . Enough of this shit, dude.” He then drives PO Sanabria and § 87(2)(b) to the stationhouse while PO Sanabria tells § 87(2)(b) to stop hitting his head against the window and tells him to sit down.

In his CCRB interview, PO Sanabria acknowledged making the statements heard in the videos (**BR 12**). He noted that he made them because § 87(2)(b) was headbutting the window and kicking and spitting everywhere. He also noted that he was trying to restrain a “grown man” in the backseat.

In his CCRB interview, PO Leboff stated that when he made the intermediate stop at the intersection of Farmers Boulevard and Suffolk Drive, he approached the police vehicle with § 87(2)(b) inside of it (**BR 11**). PO Sanabria informed him that § 87(2)(b) was attempting to kick out the car’s back windows and was “going crazy” in the backseat. He did not recall being given other details about § 87(2)(b)’s behavior between the scene of the car stop and this intersection. § 87(2)(b) was screaming, attempting to get out of the vehicle, and escape. The doors of the police car were open and Sgt. Cullen stood by them. From his position, PO Leboff was unable to see if § 87(2)(b) was doing anything else with his body besides trying to get out of the vehicle. PO Leboff’s Taser was out but he did not believe that it was pointed directly at § 87(2)(b). He noted that he took it out because § 87(2)(b) continued to actively resist officers until the moment officers placed him in the holding cell at the stationhouse. Similar to the previous allegations, PO Leboff cited § 87(2)(b)’s yelling and kicking his legs. PO Leboff was holding the Taser within the “shooting hand” and placing it against his chest in a position where it is ready to be deployed. PO Leboff believed the Taser was pointed towards the rear of the police vehicle. PO Leboff could not recall exactly where in relation to § 87(2)(b) he had pointed the Taser. PO Leboff could not recall whether the Taser was directly pointed at § 87(2)(b).

In his CCRB interview, Sgt. Cullen provided a consistent statement with the other officers (**BR 24**). He noted that at the second stop, he attempted to converse with § 87(2)(b) and calm him down. § 87(2)(b) was highly combative, aggressive, and was trying to get out of the car. § 87(2)(b) struggled with the officers and refused to listen to any lawful order. His demeanor had not changed since the scene of the car stop. § 87(2)(b) tried to exit the vehicle by placing his feet out of the car after officers told him to place his feet inside and by trying to move his body out of the car by motioning his shoulder to leave the vehicle. Sgt. Cullen stood in front of § 87(2)(b) and held him back with his body by standing in front of him. Sgt. Cullen requested ESU assistance because ESU officers are trained to handle violent and combative prisoners and have more restraining devices at their disposal. He did not initially recall any officer pointing a Taser at § 87(2)(b). When he was shown his BWC footage, he acknowledged hearing his voice saying, “Do not tase him.” He also acknowledged seeing a laser light depicted on § 87(2)(b)’s body. He did not know who pointed a Taser at § 87(2)(b). Sgt. Cullen did not have an independent recollection of telling an officer not to tase § 87(2)(b) but noted that saying this was a “good call.” He stated that he felt this way because § 87(2)(b) was handcuffed and not presenting too much of a threat besides trying to get out of the vehicle. § 87(2)(b) was restrained enough by being in the vehicle and handcuffed with enough officers present to keep him in the car until ESU arrived, adding that there was no need for the Taser.

In his CCRB interview, Det. Cordova stated that he did not recall the incident (**BR 23**). His partner for the day was PO Boehm. He did not recall any statements he made during the incident. When the investigation showed him BWC footage from Sgt. Cullen and PO Leboff from the incident, it did not help his recollection of the incident.

In his CCRB interview, PO Lozano did not recall telling § 87(2)(b) “C’mon enough of this shit, alright? Enough of this shit, dude,” (**BR 20**). When shown his BWC, PO Lozano confirmed that he was able to see the video and hear its audio clearly. He acknowledged hearing himself say, “Enough of this shit” twice. He said this because after 30 minutes of trying to deal with an extremely combative and belligerent person, it was the “only thing necessary to gain compliance from him” since trying to reason with him was not working.

The investigation did not interview PO Boehm since the BWC clearly captures the statement and the surrounding environment. The investigation determined that PO Boehm told § 87(2)(b) to not grab his “fucking hand,” because he was the ESU officer who affixed the seatbelt:

in the footage the officer who said the alleged discourtesy also said that he was trying to put on the seatbelt. Det. Cordova was tying the leg restraints while PO Boehm fixed the seatbelt.

NYPD Patrol Guide Section 203-10 (from the Patrol Guide in effect in 2019) states that officers are prohibited from making discourteous remarks and discourteous behavior towards civilians, especially “discourteous remarks regarding another person’s age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (**BR 34**). DAO-DCT Case 2017-17276 states that discourtesies used by officers may be excused in the course of a violent confrontation and high-stress situations (**BR 22**).

NYPD Patrol Guide Procedure 208-06 instructs officers to rear-cuff the prisoner and place them in the rear seat of the police vehicle, using the seatbelt when possible for their safety (**BR 16**). NYPD Patrol Guide Procedure 221-01 instructs officers to use a reasonable amount of force to gain compliance from a subject, and they are to consider the following: “nature and severity of the crime; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number and size of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject’s violent history if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence,” (**BR 17**). Also in this section, officers are instructed that “a Conducted Electrical Weapon (CEW) [taser] should never be used in CARTRIDGE or DRIVE STUN mode on a rear-cuffed prisoner as per P.G. 221-08.”

NYPD Patrol Guide Procedure 221-08 states that a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present (**BR 18**). The CEW has two modes: Cartridge mode uses the darts attached to the CEW by wires, and Drive Stun mode is the manual usage of the CEW for direct contact. It clarifies that “a CEW should never be used in CARTRIDGE or DRIVE STUN mode on a rear-cuffed prisoner.” It also defines active resisting as “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbal signaling an intention to avoid or prevent being taken into or trained in custody.” Active Aggression is defined as, “threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.” Finally, it defines passive resistance as, “minimal physical action to prevent a member from performing their lawful duty.”

Since § 87(2)(b) did not calm down during the incident, the investigation credits that the situation remained confrontational and put officers under a high level of stress. § 87(2)(g) However, unlike discourteous language where there are exceptions to the rule, offensive terms and language against the groups listed in the Patrol Guide are always prohibited. § 87(2)(g) PO Sanabria and Det. Cordova § 87(2)(g) referring to § 87(2)(b) as “fucking crazy” and “crazy” as these were remarks about a potential mental illness or disability, making them inherently offensive in their language. § 87(2)(g)

Based on the BWC footage and PO Leboff’s testimony, it is clear that PO Leboff removed his Taser because § 87(2)(b) continued his resistance. Though PO Leboff was unsure if he aimed the Taser at § 87(2)(b) Sgt. Cullen’s BWC footage clearly shows the laser light aimed at § 87(2)(b) therefore the investigation determined that PO Leboff aimed his Taser at § 87(2)(b) During the second stop, in addition to PO Sanabria and PO Leboff, Sgt. Cullen and PO Lozano were present, thus creating an even greater officer presence than during the incident of PO Leboff’s threat in the first stop. § 87(2)(b) though uncooperative and resisting, was still sitting in the back of the vehicle. Furthermore, Sgt. Cullen testified that a Taser was unnecessary and as seen in the BWC, instructed PO Leboff not to use it. Finally, § 87(2)(b) was still rear-cuffed at that

point in time, making any use of the Taser prohibited by the Patrol Guide. § 87(2)(g)

In contrast to PO Sanabria and Det. Cordova, PO Boehm's and PO Lozano's discourteous statements did not contain any inherently offensive terms or language against the specified classes of the Patrol Guide. As established, § 87(2)(b) continued to scream, shake his body, accuse officers of trying to kill him, and hit his head in the vehicle, thus continuing a violent, stressful encounter. PO Boehm needed to secure § 87(2)(b) for his and the officers' safety in the vehicle for transport, as instructed by the Patrol Guide. § 87(2)(g)

PO Lozano's remarks, while less directly related to a specific guideline, reflect the lawful need to transport § 87(2)(b) to the stationhouse without any further incident or self-harm to § 87(2)(b) who had already banged his head against the window and would not sit still in the vehicle. § 87(2)(g)

Allegation (T) Force: On December 23, 2019, at the 113th Precinct stationhouse, Police Officer Jhoan Lozano used physical force against § 87(2)(b)

Allegation (U) Discourtesy: On December 23, 2019, at the 113th Precinct stationhouse, Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)

Allegations T-U are being pled by the investigation based the BWC footage and they were not alleged by § 87(2)(b)

PO Lozano's BWC footage in IA #75 shows that once § 87(2)(b) was inside of the stationhouse, PO Sanabria, PO Leboff, and PO Lozano processed his arrest and brought him to the cell area (BR 05). Throughout his processing, § 87(2)(b) yells at the officers and calls them racist. At 43:40, in the cell area, PO Leboff removes § 87(2)(b)'s handcuffs, and PO Lozano walks § 87(2)(b) to the cell. § 87(2)(b) asks for his shoes, but the officers tell him that they will have to remove the laces first. § 87(2)(b) stands at the entry to the cells but does not move forward. PO Lozano tells him to move and turn around. After five seconds during which § 87(2)(b) does not move, PO Lozano moves in to push § 87(2)(b) into the cell. PO Lozano tells § 87(2)(b) "Go in there," and pushes § 87(2)(b) with two hands at the upper back. § 87(2)(b) jumps in, quickly turns to PO Lozano, and pushes away PO Lozano's hands. PO Lozano warns, "Dude, I swear to God, you want to touch me? Do not do that." PO Lozano backs out of the cell, but § 87(2)(b) follows him. PO Lozano tells § 87(2)(b) to get inside of the cells. § 87(2)(b) continues to walk out and asks for his shoes. PO Lozano repeats himself and says, "Get inside," while placing his hands on § 87(2)(b)'s right shoulder and left forearm in an attempt to brace § 87(2)(b) from exiting the cell. § 87(2)(b) again asks for his shoes. PO Lozano tells § 87(2)(b) to get into the cells two more times. PO Lozano then pushes § 87(2)(b) with both hands (still on his shoulder and forearm), causing § 87(2)(b) to stumble backwards into the cell. PO Lozano instructs, "Get the fuck inside!" § 87(2)(b) quickly turns and walks to PO Lozano. PO Lozano asks, "What are you going to do?" At 44:10, § 87(2)(b) makes a feint toward PO Lozano to fight him or make him flinch, but PO Leboff, quickly shuts the cell door. § 87(2)(b) pushes the door back open, but PO Leboff and PO Lozano quickly counter this and push it back, locking it. PO Sanabria says, "Enough," and the video ends.

PO Sanabria's BWC footage and the second BWC footage from PO Leboff's camera show the same portion of the incident and do not show anything new from any better angles (BR 04, 03).

In his interview, PO Lozano stated that the officers brought § 87(2)(b) to a holding cell area where they would lodge him into the cells (BR 20). Once PO Lozano lodged § 87(2)(b) he ran at PO Lozano, while swinging his arms. PO Lozano believed that § 87(2)(b) also spat at him.

He did not remember if § 87(2)(b) was saying anything. PO Lozano pushed § 87(2)(b) somewhere on the front of his body, possibly on a shoulder, his chest, or his stomach. Initially in his interview, PO Lozano did not recall if he told § 87(2)(b) to “get the fuck inside” upon pushing him into the holding cell. When he reviewed his BWC footage in the interview, PO Lozano acknowledged hearing himself say, “Get the fuck inside.” He made that statement because § 87(2)(b) was resisting PO Lozano and was not only trying to possibly escape but also injure one of the officers due to taking a possible fighting stance: § 87(2)(b) charged at PO Lozano and put his hands on PO Lozano, making contact with PO Lozano’s shoulders or arms. PO Lozano clarified that he used the specific language to try and gain compliance because he had been dealing with § 87(2)(b) for over 40 minutes, and § 87(2)(b) was resistant the entire time. PO Lozano noted that at that point, it was physically exhausting dealing with someone who had spit, yelled, and cursed at him. He noted that this kind of language may be necessary to gain compliance since previous attempts to get § 87(2)(b) to comply had failed.

PO Leboff provided a statement consistent with PO Lozano’s in his interview and stated that § 87(2)(b) had aggressive body language in the cell (**BR 11**). PO Sanabria also provided a statement consistent with PO Lozano’s in his CCRB interview (**BR 12**).

NYPD Patrol Guide Procedure 221-01 instructs officers to use a reasonable amount of force to gain compliance from a subject, and they are to consider the following: “nature and severity of the crime; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number and size of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject’s violent history if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence,” (**BR 17**).

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§ 87(2)(b) as previously discussed, actively resisted the officers and refused any of their commands. As shown in the BWC footage, not only was he initially non-compliant with PO Lozano’s instructions, but § 87(2)(b) had turned combative once PO Lozano had to force him inside of the cell. Since he was no longer handcuffed and had pushed PO Lozano’s hands out of the way while walking toward him to leave the cell, § 87(2)(g)

After the push, § 87(2)(b) continued his resistance, and maintained his aggression, and took a fighting stance against PO Lozano. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (**BR 25-26**).
- § 87(2)(b)
- PO Leboff has been a member of service for six years and has been a subject in four other CCRB complaints and nine allegations, of which two were substantiated:
 - 201908620 involved substantiated allegations of a search of a person and a search of a vehicle against PO Leboff. The Board recommended Formalized Training and the NYPD imposed the recommended penalty.
 - § 87(2)(g)
- PO Sanabria has been a member of service for seven years and has been a subject in five other CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
- PO Lozano has been a member of service for four years and has been a subject in three other CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
- Det. Cordova has been a member of service for 24 years and has been a subject in three other complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Boehm has been a member of service for 19 years and has been a subject in four CCRB complaints and six allegations, four of which were substantiated:
 - 200900870 involved substantiated allegations of a frisk, question, search of person and a stop against PO Boehm. The Board recommended Command Discipline B and the NYPD imposed the recommended discipline.
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On January 5, 2022, a request for Notice of Claim was filed with the New York City Office of the Comptroller and will be added to the case file upon receipt (**BR 28**).

§ 87(2)(b)

§ 87(2)(b)

- § 87(2)(b)

Squad: 3

Investigator: Michael Miskovski Inv. Michael Miskovski 01/14/2022
Signature Print Title & Name Date

Squad Leader: Olga Golub IM Olga Golub 01/14/2022
Signature Print Title & Name Date

Reviewer: _____

Signature	Print Title & Name	Date
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